IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

OP.No. 12679 of 2001(H)

PETITIONER:

KANKALIYA FINANCE
NO.36, VEERAPPAN STREET
SOWCARPET, CHENNAI-600 079
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER,
V.PADMAKUMAR, S/O.LATE VELAYUDHAN
'AMRUTHA', CHELAVOOR P.O.
MEZZHIKAL (VIA), CALICUT.

RESPONDENTS:

BY ADV. SRI.JOSEPH SEBASTIAN PURAYIDAM

RESPONDENTS:
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1. EXCISE INSPECTOR
   NILAMBUR.

2. ASST. EXCISE COMMISSIONER
   MALAPPURAM.

3. K.M.RAMACHANDRAN
   MADATHIL HOUSE, KOORIADE P.O.
   THIRURANGADI (VIA)
   MALAPPURAM DISTRICT.

4. STATE OF KERALA,
   REP. BY CHIEF SECRETARY TO GOVERNMENT
   GOVT. SECRETARIAT
   THIRUVANANTHAPURAM.

BY ADV. SRI.M.V.RAMACHANDRAN THAMPI,ACGSC
BY GOVERNMENT PLEADER R.BINDU

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.12679/2001

ORDER ON C.M.P.NOS.20379/2001, 20179/2001, 47766/2001
& 62877/2002 IN O.P.NO.12679/2001

DISMISSED

SD/-
8.3.2007 C.N.RAMACHANDRAN NAIR, JUDGE

APPENDIX

EXT.P1: COPY OF THE RELEVANT PAGES OF REGISTRATION CERTIFICATE OF VEHICLE WITH REGN. NO.KL-10/E-8760.

EXT.P2: COPY OF HIRE PURCHASE AGREEMENT DATED 16.5.1999 BETWEEN THE PETITIONER AND THE THIRD RESPONDENT.

EXT.P3: COPY OF PETITION DATED 22.3.2001 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.

EXT.P4: COPY OF COMMUNICATION NO.M-3-5105/99 DATED 27.3.2001 SENT TO THE PETITIONER BY THE SECOND RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J

O.P.No.12679 of 2001

Dated this the 8th day of March, 2007

JUDGMENT

Petitioner financed for the purchase of a truck which was involved in an Abkari offence while transporting 204 cases of Indian made foreign liquor. The vehicle was seized by the State Excise Authorities and initiated proceedings for confiscation under Section 67B of the Abkari Act. The petitioner prays for cancelling confiscation orders of the Assistant Excise Commissioner. According to the petitioner, petitioner has charge over the vehicle by virtue of endorsement of hypothecation for the loan advanced by the petitioner for purchase of the vehicle. Therefore, provision for confiscation should yield to petitioner's charge over the motor vehicle under Section 51 of the Motor Vehicle Act, 1988, is their case.

2. Heard the counsel appeared for the petitioner and the Government Pleader for the respondent.

3. Petitioner relied on Section 51(5) of the Motor Vehicles Act which entitles a financier to get registration of the hypothecated vehicle changed in favour of the Financier after

default is committed in repayment of the loan with which the vehicle was purchased. The petitioner's charge over the vehicle is recognised under Section 51(5) of the Motor Vehicles Act. However, it comes to an end when Abkari offence is committed with the said vehicle which entitles the Excise Authorities to confiscate the vehicle under Section 67(B) of the Act. The counsel for the petitioner contended that the provisions of the Motor Vehicles Act which is the Central Act, has overriding effect over the provisions of the Abkari Act. I do not think the contention is quite right because Abkari Act is a special legislation which is on a subject in the State List under the Seventh Schedule of the Constitution of India. The opening of the words of Section 67B(1) makes it clear that the provisions of the Act has overriding effect over other provisions of the same Act and any other law, for the time being, in force which takes in the Motor Vehicles Act also. Therefore, Section 67B of the Abkari Act has overriding effect over Section 51(5) of the Motor Vehicles Act.

4. The counsel for the petitioner contends that charge

over the vehicle in the form of endorsement of hypothecation stands unexpunged. Therefore, the petitioner's contention is that the vehicle subject to hypothecation even when confiscated under Section 67(B) of the Abkari Act continues to be liable. I do not think this position is correct because when ownership is forfeited to Govt. under statutory proceedings the charge created by the owner gets extinguished. It is to cover this risk also, Financier take collateral security to cover loan.

4. However, in this case the Government Pleader has reported that confiscation proceedings got cancelled in writ proceedings and in appeal. More over, it is made clear that even if charge gets cancelled in confiscation proceedings, the petitioner can proceed against the borrower personally and recover loan from his other assets.

The O.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR,
JUDGE

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